IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7081 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAVNIT BHAILALBHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7081 of 2001

MR DM THAKKAR for Petitioner No. 1

S.S.PATEL, AGP for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 01/11/2001

ORAL JUDGEMENT

By means of filing this petition under Article

226 of the Constitution of India, petitioner/detenue who has been detained by the District Magistrate, Surendranagar vide order dated August 6, 2001 (Annexure-A to the petition) in exercise of the powers conferred under sub-Section 2 of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('the P.B.M. Act' for short hereinafter), has challenged the said order and prayed to issue a writ of habeas corpus or any other writ, order or direction quashing and setting aside the order of detention and set him at liberty forthwith.

2. The averments made in the petition and the grounds of detention manifest that petitioner is running a fair price shop at Verawadar in Surendranagar District. On July 31, 2001, an inspection was carried out by the Supply Inspector. During inspection it was found that the total stock of 1600 liters of blue kerosene meant for public distribution, was not distributed to the card holders and it was unauthorisedly disposed of for making profit. Moreover, on July 31, 2001, other stock of 400 liters was also unauthorisedly disposed of and thereby the petitioner has indulged into blackmarketing activity. Therefore, according to the detaining authority petitioner was carrying on the activities in a manner prejudicial to the maintenance of supply of commodities essential to the community and public at large and therefore, the authority found it necessary to detain him on the grounds stated in the impugned order.

3. Though the petitioner has challenged the order of detention on various grounds, Mr.D.M.Thakkar, learned advocate for the petitioner has restricted his arguments to the fact that documents mentioned in paragraph 11 of the representation dated August 27, 2001 (Annexure-D to the petition), sent to the District Magistrate, Surendranagar, by the detenu have not been supplied to him so far. Therefore, non-supply of those documents pari passu has seriously prejudiced the right of the petitioner/detenu of making an effective representation and thereby violated the safeguard enshrined in Article 22(5) of the Constitution and vitiated the order of detention. He, therefore, contended that continued detention of the petitioner has become illegal and on this sole ground the petition is required to be allowed and the petitioner may be set at liberty forthwith.

4. Mr. S.S.Patel, learned AGP has appeared for respondent Nos. 1, 2 & 3 and opposed the petition by filing the affidavit in reply sworn by V.C.Trivedi, District Magistrate, Surendranagar whereas Ms

P.J.Davawala, learned counsel has appeared for respondent No. 4, Union of India, and contested the petition by filing affidavit in reply sworn by S.L.Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi.

5. Mr. S.S.Patel, learned AGP has contended that the contention advanced by Mr. D.M.Thakkar with respect to non-supply of the documents referred to and relied upon by the detaining authority is not wellfounded. In fact, documents mentioned in paragraph 11 of the representation dated August 27, 2001 made by the detenu to the detaining authority are in possession of the detenu himself from the very beginning and the said fact is narrated in the affidavit in reply sworn by V.C.Trivedi wherein, inter alia, it is contended that after the detention of the petitioner/detenu, he is supplied with the copies of the earlier instructions which were issued to the petitioner within a period of 5 days. The petitioner/detenu has not produced bill No. 5115 which shows that he has committed irregularities. Secondly, the licence is also not taken into custody and therefore, there is no necessity of giving copy of such documents, therefore, the petitioner is not prejudiced and it cannot be said that the petitioner could not make effective representation. He, therefore, contended that the documents which are demanded by the petitioner/detenu are rightly not supplied and on this count the petitioner is not entitled to claim any relief and urged to dismiss the petition.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the documents annexed therewith and also considered the affidavits in reply filed by the contesting respondents and the impugned order - Annexure-A.

7. On having perusal of the representation dated August 27, 2001 (Annexure-D to the petition) sent by the petitioner to the District Magistrate, Surendranagar, in paragraph 11 thereof it is specifically stated that he has not been supplied with the copy of the important material and vital documents referred to in paragraph 2 of the grounds of detention, that is, the copy of the stock book maintained by the detenu, the copy of bill No. 5115 dated July 31, 2001 from the record maintained by proprietor Prafulbhai Shah, copy of bill No. 5114 dated July 30 2001, copy of inspection reports and instructions issued on May 18, 1999, January 18, 2000, June 14, 2000,

December 16, 2000, copy of the order No. 27/1999 imposing fine of Rs. 250/-, copy of licence No. R-378/9, copy of authorisation No. 68/66, copy of ration cards of 40 card holders. Non-supply of the above documents amounts to non-supply of grounds of detention. The petitioner could not make an effective representation on account of non-supply of the copies of the above vital documents, which is violative of Article 22(5) of the Constitution.

8. On having perusal of the reply affidavit filed by the detaining authority, that is the District Magistrate, Surendranagar, it is nowhere stated in para 8 that after the detention of the petitioner, he has been supplied with the copies of the earlier instructions which were issued to him within a period of five days. The petitioner has not produced bill No. 5115 which shows that the petitioner committed irregularities. Secondly the licence is also not taken into custody and, therefore, there is no necessity of giving copy of such documents, therefore, the petitioner is not prejudiced and it cannot be said that the petitioner could not make an effective representation. It may be noted that in the reply affidavit it is no where stated as to whether copies of 40 ration cards have been supplied to the detenu. In the grounds of detention supplied to the detenu, in para 3, it is specifically stated that before passing the impugned order of detention, detaining authority has examined 40 card holders of different locality with their cards and during examination it is divulged that they have not received stock on July 30 2001 or July 31, 2001 nor there is any endorsement on the cards about supply of that stock to the card holders.

9. In view of the aforesaid state of affairs, it is an admitted position that the detaining authority has not supplied the documents referred to in para 11 of the representation and it has seriously prejudiced the right of the petitioner of making an effective representation and, therefore, the right enshrined in Article 22(5) of the Constitution is infringed.

10. A similar question arose before the Supreme Court in the case of MOHD. ZAKIR V. DELHI ADMINISTRATION AND OTHERS - 1982 SC 696. In the said case it has been observed that if the documents relied on by the authorities are not supplied with grounds of detention, the order of detention is illegal. It is further held that it is the constitutional mandate which requires detaining authority to give the documents relied on or referred to in the order of detention pari passu in the

grounds of detention in order that detenu may make an effective representation immediately instead of waiting for the documents to be supplied with. It is manifest that the question of demanding the documents is wholly irrelevant. The infirmity in this regard is violative of constitutional safeguard enshrined in Article 22(5) of the Constitution.

11. A similar view is also expressed by this Court in the case of KOLI SURESHBHAI BALABHAI PARMAR V. DISTRICT MAGISTRATE, BHAVNAGAR, 2000 (2) GLH 540.

12. Applying the principle laid down by the Supreme Court and this Court, to the facts of the present case, it is clear that the present case is identical to the case referred to above. In the present case also at the cost of repetition be it stated that the documents which have been referred to by the detaining authority in the impugned order have not been supplied to the detenu, though demanded, which has seriously prejudiced the right of the petitioner to make an effective representation, therefore continued detention is held to be illegal and, on this ground petition deserves to be allowed by quashing and setting aside the impugned order of detention and setting the petitioner at liberty forthwith.

13. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated August 6, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*